No. 2497

# In the United States Circuit Court of Appeals

## For the Ninth Circuit

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In the Matter of M. BARDE and J. LEVITT, individually and as partners as BARDE & LEVITT,
Bankrupts.

## APPELLANT'S BRIEF

On review of the order of the District Court of the United States for the District of Oregon, setting aside exempt property.

BAUER & GREENE and
A. H. McCURTAIN,
Solicitors for Trustee and Appellant.

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## STATEMENT.

Barde & Leavitt, as partners and as individuals, were adjudged bankrupts March 7, 1913. R. L. Sabin was appointed trustee April 1, 1913, and is the appellant herein. In his schedule of assets filed in the District Court March 15, 1913, M. Barde listed lot 9 in block 15 in Goldsmith's Addition to the City of Portland, Multnomah County, Oregon, being one city lot 50 feet by 100 feet in dimensions, on which there was and now is a dwelling house, then and now occupied by said bankrupt and his family as a home. The bankrupt valued the same at $12,000, and claimed an exemption thereof

as a homestead under the laws of Oregon. Subsequently the appraisers appointed in the bankruptcy proceedings valued the same at $20,000. The bankrupts attempted to compound their debts but their proposed composition was not confirmed. (*In re Barde,* 207 Fed. 654). The trustee in bankruptcy did not report or set aside the house and lot as a homestead exempt from sale, and on April 11, 1914, filed his petition with the referee in bankruptcy praying for an order directing the sale thereof free from the homestead claim of the bankrupt, and that the sum of $1500 out of the proceeds of such sale be paid to the bankrupt as and for his homestead rights therein, or for a reappraisement and valuation of the property and an order requiring the bankrupt to pay the trustee such sum as said reappraisement and valuation may exceed $1500. After regular proceedings on said petition the referee directed a sale of the property at public auction in the usual manner subject to confirmation, for not less than $1500, said sum to be set aside and paid to the bankrupt as and for his homestead exemption. The referee found the value of the house and lot to be $12,000, and further ordered that in case the bankrupt paid to the trustee, on or before the sale, the sum of $10,500 in cash for the benefit of the creditors of the estate, said sale should not be made and the entire parcel of land thereupon be set apart as the homestead of the bankrupt exempt from all further claim of said trustee.

The referee certified the matter to the District Court, where the trustee moved to confirm the report and order. On June 8, 1914, the District Court reversed the referee and decreed that said property be set aside to the bankrupt as exempt. On August 28, 1914, the trustee

filed his petition for review of said order of the District Court and on August 31, 1914, the same was allowed.

## SPECIFICATIONS OF ERROR.

The order and decree of the District Court was and is erroneous as a matter of law in that:

*First.* The statutes of the State of Oregon (Lord's Oregon Laws, Sections 221, 222, 223, 224 and 225) upon which petitioner, the trustee in bankruptcy, relied for his right to sell said house and lot, give him, in right of his status under section 47 of the Bankrupt Law, the right, option and privilege of realizing and appropriating for the creditors of the bankrupt all of the value of said homestead in excess of $1500.

*Second.* That the trustee in bankruptcy is entitled to sell said homestead, regardless of its area or dimensions, upon payment to said bankrupt of the sum of $1500.

## ARGUMENT.

The following is the Homestead Law of Oregon as comprised in Chapter II of Title III, Volume I, Lord's Oregon Laws:

"§221. **HOMESTEADS EXEMPT—MUST BE ACTUAL ABODE.**

The homestead of any family shall be exempt from judicial sale for the satisfaction of any judgment hereafter obtained. Such homestead must be the actual abode of, and owned by such family or some member thereof.

"§222. **EXTENT OF HOMESTEAD EXEMPTION.**

Such homestead shall not exceed $1,500 in value, nor exceed one hundred and sixty acres in extent, if not located in town or city laid off into blocks and lots; if located in any such town or city, then it shall not exceed one block; but in no instance shall such homestead be reduced to less than twenty acres nor one lot, regardless of value.

"§223. **MORTGAGE LIEN ENFORCED AGAINST HOMESTEAD.**

This act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife.

"§224. **CLAIM OF HOMESTEAD, UPON LEVY-APPRAISEMENT.**

When any officer shall levy upon such homestead, the owner thereof, wife, husband, agent or attorney of such owner, may notify such officer that he claims such premises as his homestead, describing the same by metes and bounds, lot or block, or legal subdivision of the United States; whereupon such officer shall notify the creditor of such claim, and if such homestead shall exceed the minimum in this act, and he deem it of greater value than $1,500, then he may direct the sheriff to select three disinterested householders of the county, who shall examine and appraise such homestead, under oath, commencing with the twenty acres or lot upon which the dwelling is located, appraising such lot or twenty acres separately;

and if the same exceed $1,500, then the sheriff shall proceed to sell all in excess of $1,500 by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor, if he choses to direct; otherwise, he shall sell the same as aforesaid, so as to leave the homestead as compact as possible.

"§225. **WHEN EXECUTION CREDITOR MAY SELL HOMESTEAD.**

In lieu of the proceedings aforesaid, the execution creditor may at any time pay the execution debtor the sum of $1,500, and proceed to sell the homestead as he might heretofore have done, adding the said $1,500 to his lien, but the money aforesaid shall be exempt from execution.

"§226. **HOMESTEAD CONTINUES EXEMPT AFTER DEATH.**

The homestead aforesaid shall be exempt from sale on any judicial process after the death of the person entitled thereto for the collection of any debts for which the same could not have been sold during his lifetime, but such homestead shall descend as if death did not exist."

Prior to 1893, there was no homestead exemption in Oregon. The residence occupied by the head of a family could be levied upon and sold for the satisfaction of a judgment against him the same as any other real property. In that year of panic and financial distress the legislature passed the law entitled: "An Act to Ex-

empt Homesteads from Attachment and Judicial Sale," approved February 21, 1893 (Laws of Oregon, 1893, pp. 93-94). In 1905, a slight amendment to the first section, which does not affect the pending question, was made, and it now constitutes the sections in Lord's Oregon Laws above quoted.

The case squarely presents the question whether a bankrupt is entitled by that law to retain his homestead free from claims of creditors where it consists of but one city lot incapable of division worth more than $1500.

Homestead exemption laws exist in most of the states and give heads or members of families exemptions either in money or land ranging from a few hundreds to five thousand dollars, the average being somewhere between $1000 and $2000, but we have found no law with similar wording to that of the Oregon statute in question. Its object and intention is similar, but the language in which that intention is attempted to be expressed is like nothing else ever before enacted, and this case is therefore one of first impression. Little aid is to be found in decisions construing other homestead laws. The Oregon supreme court has stopped just short of deciding the point, but held that in view of sections 224 and 225, Lord's Oregon Laws, a creditor desiring to subject a homestead to a mechanic's lien, on the theory that its value is in excess of $1500 has the burden of proving such value.

Davis v. Low, 66 Or. 599; 135 Pac. 314.

In a case involving the right of a bankrupt to a homestead exemption out of the proceeds of the sale of

her homestead on a mortgage foreclosure in excess of the mortgage debt, *Gilbert, Circuit Judge,* decided that the bankrupt was entitled to the proceeds of her homestead up to the sum of $1500 after payment of the mortgage debt and costs of foreclosure.

*In re* Barrett, 140 Fed. 569; 16 Am. B. R. 46.

A case more nearly in point, and one which is authority for the procedure adopted in this case, came to this court on petition for revision of the proceedings of the District Court of Idaho directing the sale of the homestead of a bankrupt. The law of Idaho exempts a homestead to the value of $5000. The homestead in question was appraised at $9000 and was found incapable of segregation or division, and the court decreed its sale unless the bankrupt should pay the excess of $4000 to the trustee. The decree further provided that in case of sale the land should not be sold for less than $5000, which sum be paid to the bankrupt, the excess of the proceeds, if any, to become a part of the assets of the estate for distribution among creditors in due course. In affirming the decree of the lower court, *Wolverton, District Judge,* who wrote the opinion of the Court of Appeals, said:

> "It seems to be in conformity even with the Idaho statutes that, if the land is worth more than the value of a homestead, to-wit, $5,000, it should be determined what its value is. This the court did; but, prior to directing the sale, it extended to the exemptioner the right to retain the homestead by paying to the trustee the amount

that it was worth over and above the $5,000 exemption. This judgment of the court is assigned as error. We are of the opinion, however, that it is the policy of the Bankruptcy Act that the exemptioner should have the exemption in specie when it can be set aside to him. *In re Manning* (D. C., S. Car.) 10 Am. B. R. 498, 123 Fed. 180. That was what the court endeavored to do in the present case. The procedure by which the value of the property was ascertained seems to have been regular, and there is scarcely a question made but that the homestead claimed was worth approximately $9,000. We are also of the opinion that, by reason of the court's authority touching the manner of setting aside the homestead, it was empowered to require the property to be sold in the event that the exemptioner was unable or declined to pay the $4,000 surplus into the estate. On this phase of the controversy, therefore, we hold that there was no error."

Bank of Nez Perce v. Pindel, 193 Fed. 917; 28 Am. B. R. 69.

While the value or amount of the exemption to be allowed to a bankrupt depends upon the State law, the method of ascertaining the value of the property claimed as exempt, or of setting apart the property, is not governed by such law, but by the bankruptcy law, and the property may be sold by the trustee under decree of the bankruptcy court, the bankrupt receiving his exemption in money out of the proceeds.

In re Lynch, 101 Fed. 579; 4 Am. B. R. 262.

A statute, like any other document, must be construed as a whole by the four corners, and if possible effect must be given to every provision so as to harmonize the whole. Undue prominence and emphasis is not to be given to any particular word or phrase whereby discord and confusion is introduced among other parts of the statute. There is probably not another homestead statute where this rule of construction must be literally "on the job" all of the time in getting at the true intent of the legislature so much as it has to be in this inquiry. But the faithful application of the rule, along with some others which hereinafter will be referred to, evolves sense and reason out of what at first reading, appears to have little of either.

Section 221 of the law defines the homestead right and limits it to the actual abode owned by a family or some member thereof.

Section 222 defines the extent of the homestead exemption and presents the first difficulty in the construction of the act, for the first declaration therein: "Such homestead shall not exceed $1500 in value" is followed by a limitation as to area concluding with the clause: "But in no instance shall such homestead be reduced to less than * * * one lot regardless of value." There is a rule of construction to the effect that where there is an irreconcilable conflict between different parts of the same act, the last in order of position must control (26 Am. & Eng. Enc. Law 2d Ed. 619; 36 Cyc. 1130), so if the broad rule of construing by the four corners of the whole act be lost sight of here, and the mind concentrated upon this section alone, the conclusion must be that the bankrupt is entitled to

his homestead, since it consists of no more than one city lot, whether it be worth $1200 or $12,000 or $12,000,000. But the rule applicable to conflicting clauses refers to clauses of the entire act, not merely to clauses of one section thereof, and when we come to consider a subsequent section of this act the rule will be brought into action again.

Section 223 presents no feature pertinent to this case.

Section 224 is ambiguous for, after providing for an appraisement when the execution creditor shall deem the homestead of greater value than $1500, the appraisement to commence with the lot upon which the dwelling is located and appraising the same separately, the language is: "and if the same exceed $1500, then the sheriff shall proceed to sell *all in excess of $1500* by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor, if he chooses to direct; otherwise, he shall sell the same as aforesaid, so as to leave the homestead as compact as possible." In this section there is an apparent intention to limit the process of appraisement of the value of the homestead only to cases where the homestead claimed exceeds the minimum of one lot and when the execution creditor shall deem it worth more than $1500, but the provision for sale by the sheriff after the apraisement has been made quite clearly directs a sale of all in excess of $1500 which supports the provision in section 222 declaring that such homestead shall not exceed $1500 in value. Thus far in the examination of the act is to be found contradictory provisions from which, without close analysis, it is difficult to determine whether the

legislature meant that the homestead claimant is entitled to the whole of one lot under any and all circumstances, or whether, in case of an appraisement which shows one lot to be worth more than $1500 the sheriff could sell all in excess of $1500 in value. It is significant, however, that the process of appraisement is to begin *with the twenty acres or lot upon which the dwelling is located appraising the same separately.* If, as will be claimed by the bankrupt, the debtor is entitled under this act to a homestead exemption of twenty acres or one city lot, regardless of value, what is the necessity of appraising the twenty acres or one city lot *separately?*

Why was this provision for a separate appraisement of the twenty acres or one lot inserted in the act? If the claimant is to have twenty acres or one lot in any event, why appraise it at all? Coupled with the clause which follows: "and if the same exceed fifteen hundred dollars, then the sheriff shall proceed to sell all in excess of fifteen hundred dollars by lots or smallest legal subdivisions" it appears to indicate an intention to set a maximum limit of value of the homestead regardless of its area.

It will also be noted that section 224 treats of appraisement by lots or parcels yet when it comes to speak of the sale that classification is abandoned and the basis of the right to sell is expressed in terms of *value* not *dimension.* Had the legislature intended to provide only for a sale of the excess in area over one lot the language would have been: "then the sheriff shall proceed to sell all in excess of *one lot* (or twenty acres as the case may be) by lots or smallest legal subdivisions," etc. There is a strong current of phraseology running

through sections 222 and 224 persuasive of an intent to put a limitation of value on the homestead as well as a limitation as to size.

But when due consideration is given to the succeeding section 225 the construction contended for by the trustee becomes more obviously the correct one. Bearing in mind that section 224 relates to distinct proceedings for a formal appraisement and subsequent sale by the sheriff of all of the property claimed as exempt in excess of $1500, section 225 provides a substitute procedure. It says: *"In lieu of the proceedings aforesaid, the execution creditor may at any time pay the execution debtor the sum of $1500* and proceed to sell the homestead as he might *heretofore* have done, adding the said $1500 to his lien, *but the money aforesaid shall be exempt from execution."*

Now if the legislature literally meant that in no event should the homestead be reduced to less than one lot this section serves no purpose. It is useless, for the preceding section provides an elaborate method of ascertaining value and dimensions when the execution creditor deems the property claimed by the debtor to be of greater value than $1500. Unless the lawmakers intended to make some provision for reaching the excess in the value of a homestead that might be claimed in one lot it is impossible to give effect to section 225. If the debtor claims an exemption of more than one lot which the creditor deems worth more than $1500, the appraisement provided for in section 224 is for the purpose of setting aside the excess of $1500 in value for sale on execution, but the legislature must have contemplated that there would be cases where the value of

a home on one lot would exceed $1500 and not wanting to reduce the homestead in specie to less than one lot, and realizing the impracticability of doing so in many instances, they enacted section 225 to provide an alternative or substitute procedure to cover cases to which in the nature of things the process directed in section 224 could not apply. To prevent the law from being unworkable, as well as leading to inequitable, unreasonable and absurd consequences, the legislature enacted section 225 *"in lieu of the proceedings aforesaid"* whereby the execution creditor is given the right and power *at any time* to pay the debtor his $1500 exemption in cash and have the homestead sold. The words "at any time" are significant. They were inserted for a purpose and obviously that purpose is to give the execution creditor the right of exercising his option of paying the debtor $1500 in lieu of the homestead *at any time, i. e.,* whenever he deems it to his interest and convenience to do so, even after an appraisement as provided in the preceding section but before sale. In such case the creditor, of course, would be taking the chance of the property being worth less than the $1500 thus paid. If the property sold for less he would be out the difference between the amount realized and the $1500 paid to the homestead claimant, besides not realizing anything on the original amount of his execution. The debtor would then have no homestead in land but he would have the $1500 in cash in lieu thereof with which to purchase another home. Section 225, therefore, contains another clear, and it seems to us decisive, declaration of an intention on the part of the legislature to limit the homestead exemption to $1500 in value in any event.

By it $1500 in money is made the standard, and thereby ambiguous provisions in preceding sections are harmonized.

On the argument in the court below it was claimed by counsel for the bankrupt that the word "heretofore" in the clause: "and proceed to sell the homestead as he might *heretofore* have done," refers to the provisions of section 224; that "heretofore" as used in section 225 relates no further back than to the preceding section; that section 224 is the only section in the law which provides for any proceedings and therefore (they argued) the right to sell the debtor's property by paying him $1500 comes into existence only when the homestead claimed by the debtor exceeds the minimum of one lot. It was claimed that this interpretation is the only one that will harmonize all sections of the law. On the contrary, it would make "confusion worse confounded." In the first place, as above stated and as clearly appears from its language, section 225 provides a *substitute* for the appraisement and sale specified in section 224. It is not merely additional or supplementary to, nor an elaboration or extension of that proceeding; it is an alternative, complete in itself. By section 225 the execution creditor is given a clear choice of a course of action; he can have an appraisement made and sell the excess of $1500 in value as provided in section 224, or *in lieu* of that course he can exercise a more direct and summary right by paying the $1500 in cash. In the latter event he can have the homestead sold by the sheriff —not merely the excess of one lot nor the excess of $1500, but the whole property. "As he might heretofore have done" undoubtedly refers to what he might have

~~been~~ done before the enactment of the law. Had the legislature meant that after paying the debtor $1500 the creditor could proceed to sell only as prescribed in section 224, that is to say, all of the homestead in excess of $1500 or all in excess of one lot, the language in section 225 would have been "as hereinbefore," or "as hereinabove" or "as in the preceding section of this act" provided.

The statutes of some of the states have declared the word "heretofore" when used in a statute to mean any time previous to the day when such statute shall take effect.

Rev. Stat. Mo. 1899, Sec. 4155.

Civ. Code Mont. 1895 Sec. 4670.

Hurds Rev. Stat. Ill. 1901, p. 1720, c. 131, Sec. 1, Subd. 17.

Rev. Stat. Wis. 1898, Sec. 4971.

Code Iowa 1897, Sec. 54.

Laws N. Y. 1892, c. 677, Sec. 9.

We find no statutory definition in the laws of Oregon, but the popular, usual and ordinary meaning of the word coincides with the foregoing. As a noun the word "heretofore" means time that is past. As an adverb it means: In previous times; previously; to the present time; hitherto.

Standard Dictionary.

Heretofore means in time past; in the time before the present; formerly; before this time; down to this time; hitherto. In statutes and constitutions the words "hereafter" and "heretofore" usually relate to the time when the enactment takes effect, and not to the time of its passage.

15 Enc. Law 2d Ed. 336.

21 Cyc. 435.

Andrews v. Thayer, 40 Conn. 156.

George v. People, 167 Ill. 447.

People v. Baltimore R. Co., 117 N. Y. 150.

A statute must be construed with reference to the time of the passage thereof, or with reference to its going into effect. That meaning must be given to words which they had at the date of the act, and descriptive matter therein must refer to things as they existed at thetime of its passage. But words of time are usually to be construed as spoken when the act takes effect.

26 Enc. Law 2d Ed. 565, 611, 612.

Gerding v. Beall, 63 Ga. 562.

People v. Cook County, 176 Ill. 584.

Evansville v. Barbee, 59 Ind. 593.

Charles v. Lamberson, 1 Iowa 435.

Bennett v. Bevard, 6 Iowa 82.

Thatcher v. Haun, 12 Iowa 303.

Fairchild v. Masonic Hall Assn., 71 Mo. 527.

Matawan v. Horner, 48 N. J. L. 445.

State v. Holtcamp, 235 Mo. 322.

Counsel for the bankrupt will contend that the phrase "as he might heretofore have done" should be construed as if it read substantially, "as he might heretofore *as provided in the preceding section of this act* have done." They are necessarily forced to that contention, because if it be admitted that "heretofore" as used in section 225 has reference only to time previous to the day the statute took effect, and that the intent thereof is that the creditor may proceed to sell the homestead as he might have done *before the taking effect of the act* the conclusion must follow that the right given to the execution creditor of paying the homestead claimant $1500 in cash in lieu of the home claimed by him wipes out the homestead in specie, and leaves the land claimed as such open to levy and sale as it was before the homestead law went into effect; because prior to that time, as hereinbefore stated, there was no exemption from execution sale of land provided in the laws of Oregon. Our position is that section 225 means just this, and that the use of the word "heretofore" so indicates. To give that word any other meaning is to import something in its definition not justified by any of the authorities above cited, and, moreover, would make the entire section practically meaningless, because it would leave the execution creditor just where section 224 left him, and the section would not furnish the procedure which in express terms it declares to be "in lieu of the proceedings" in section 224.

That section 225 is susceptible of no such construction as will be contended by the bankrupt is manifested not only by the use therein of the word "heretofore" but also by the use of the word "homestead."

In section 224 the sale authorized is of "all in excess of $1500" or, as counsel may argue, all in excess of one lot; but in section 225 there is no such restriction on the sale. It provides that when at any time the execution creditor pays $1500 he may sell "the homestead." Not merely a part of it, or an excess above a certain area or value, but *the homestead.* Now, this must necessarily mean the whole parcel, otherwise the sale would not be *"in lieu of"* the kind of sale mentioned in the preceding section which is a sale of the *excess,* and a sale of the excess would not be a sale of *the homestead*—it would leave a homestead trimmed down to a minimum but nevertheless a homestead. Moreover, if the right to sell the debtor's property on paying him $1500 comes into existence only when the homestead claimed by the debtor exceeds the minimum in quantity, that is, one lot, why give the creditor any such option? What good would it do him to increase his demand $1500 by paying out that sum in hard cash for the barren privilege of doing what the law gave him a right to do without that?

That section 225 was intended to provide an exemption of not to exceed $1500 in lieu of the provisions for a specific exemption of not less than 20 acres or one lot is made yet more obvious by the last clause therein *which exempts from execution the $1500 in cash that may have been paid by the creditor.* This clause removes every doubt as to whether the procedure under section 225 is intended as a complete substitute for the

proceedings mentioned in section 224. The legislature cannot have intended that the debtor should have both his homestead of one lot and $1500 in cash paid by the execution creditor, yet if the construction contended for by the bankrupt in the court below be sustained that result will follow. No where in the act is there anything to indicate that the legislature intended to grant a homestead of not less than one lot *and $1500 in addition thereto.* The limitation apparent all through its provisions is $1500 in value. Provision is made for reserving a homestead in specific lands, and where it is set aside in specie it shall not be less than one lot; but at all times this provision is subject to the limitation as to value and hence section 225 unmistakably gives an alternative, exercisable by the execution creditor, of putting up $1500 in cash which is to stand for and be in lieu of the specific homestead of one lot or twenty acres. The debtor canot retain the homestead in land, be it one lot or more, and the money paid in lieu thereof at the same time. The law transfers his exemption right from the land to the money. The land is thereby released and freed from the homestead claim and can be sold on the execution in the same manner it might have been sold before the homestead law went into effect.

This interpretation does no violence to any of the settled rules of statutory construction. The pole star, of course, is the intention of the legislature which must be gathered from the language of the act, and in view of the benevolent purpose of such laws they are to be liberally construed so as to give effect to them in accordance with their letter and spirit. This rule, however, does not authorize the court to go beyond the

spirit and intent of the statute. The construction adopted must be sensible and reasonable, and great care should be taken, while liberally construing homestead laws, to prevent them from becoming instruments of fraud.

15 Enc. Law 2d Ed. 533, 534 .

Drucker v. Rosenstein, 19 Fla. 191.

Southwick v. Davis, 78 Cal. 504.

In a case involving the construction of the exemption laws of Washington, this court, speaking by *Ross, Circuit Judge,* said:

"While it is well-established law that exemptions in behalf of unfortunate debtors are to be liberally construed in furtherance of the object of such statutes, it should never be forgotten that courts have not the power to legislate, and can no more add an exemption not fairly within the statute than they can take from the statute. So also must it be remembered that courts of bankruptcy proceed upon equitable principles, and should no more sustain a positive fraud than would a court of equity."

In re Gerber, 186 Fed. 693, 698; 26 Am. B. R. 608, 613.

In line with this doctrine there is another to the effect that courts will adopt that construction most agreeable to reason and justice as embodying the in-

tention of the lawmakers, for it will not be presumed that the legislature contemplated unreason and injustice. Where, therefore, a literal interpretation leads to unreasonable or unjust consequences, and an intention to adopt a reasonable statute may fairly be inferred, the court will adopt a sensible construction such as will effectuate the legislative intention and avoid the objectionable consequences.

26 Enc. Law 2d Ed. 646, 647, *Cases cited Notes 1and 2.*

Lau Ow Bew v. U. S., 144 U. S. 47; 36 L. Ed. 340, 344.

"Statutes and Statutory Construction:" Monograph, 1 Fed. Stat. Ann. pp. XLIX to LVII.

So, also, there is a strong presumption against absurdity in a statute, and when the language of an act is susceptible of two senses, that sense will be adopted which will not lead to absurd consequences.

26 Enc. Law 2d Ed. 648.

Holy Trinity Church v. U. S., 143 U. S. 457; 36 L. Ed. 226.

Tsoi Sim v. U. S., 116 Fed. 920.

U. S. v. Hogg, 112 Fed. 909.

With these general canons of statutory construction in mind a comparison of the two interpretations of the Oregon homestead law contended for in this case will

show that the position of the trustee in this case presents more points of agreement with settled doctrines, and evolves a more just, reasonable, sensible statute, freer from harsh, inequitable and absurd consequences, than does the position of the bankrupt. Nor is this all. No doubt courts who are called upon to construe a statute could frequently write a better one. That is not the function to be exercised here; but in determining the meaning of a statute every part of it is to be given effect if possible. The whole act is to be construed together, and we claim for our interpretation that if it does not give literal effect to every clause in the law in question its application will certainly effectuate more of the provisions of the act than the construction urged by the bankrupt.

For example: the bankrupts position hinges almost exclusively on the last clause of section 222, which is to disregard the first clause in the same section, also the provision in section 224 directing a sale of all in excess of $1500, and also practically the whole of section 225. If it be held that the debtor shall in any event and under all circumstances have an exemption of not less than one lot section 225 becomes inoperative and meaningless. If it be held that section 225 merely gives the creditor the right of selling the excess over one lot upon payment of $1500, then the word "heretofore" in said section is given a distorted meaning, and the last clause: "but the money aforesaid (i. e. the $1500 paid by the creditor) shall be exempt from execution" is either made inoperative or else in effect gives a double exemption—one lot *and $1500*. Another example of absurd, unjust and inequitable consequences that would flow from such

a construction is that a debtor could retain a million dollar home as exempt provided it was constructed on one city lot. The owner of a steel sky-scraper in the heart of the city costing any amount, could by making it his actual abode relieve it of all danger of levy for his debts. Probably the legislature could enact a valid law giving such an exemption if it saw fit; the power to exempt $1500 includes the power to exempt $15,000 or $1,500,000. Our point is that $1500 in value, as such laws go, is a fair, just and reasonable homestead exemption; $15,000 or $1,500,000 is not, and there is a strong presumption that the legislature did not intend to pass a law from which such unreasonable consequences could flow. The law in question, taking it by the four corners, contains language and provisions which are obviously in harmony with the reasonable and sensible interpretation urged herein, and there is no clear, unqualified declaration of a contrary intention to be found in the act.

We do not overlook the last clause in section 222. It will be the dominant note in respondent's brief. But why overlook the first clause in the same section? The language of the penultimate clause of section 224? The whole of section 225?

In construing a statute every section, provision and clause should be expounded by reference to every other, and, if possible, every clause and provision be given and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another. The most general and absolute terms of one section may be qualified and limited by conditions and exceptions

contained in another, so that all may stand together. If in a subsequent section of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing the phrases.

Peck v. Jenness, 7 How. 612; 12 L. Ed. 841.

Bernier v. Bernier, 147 U. S. 242; 37 L. Ed. 152.

Gayler v. Wilder, 10 How. 447; 13 L. Ed. 504.

Washington Market Co. v. Hoffman, 101 U. S. 112; 25 L. Ed. 782.

Brown v. Duchesne, 19 How. 183; 15 L. Ed. 595.

Alexander v. Alexandria, 5 Cranch 1, 7-8; 3 L. Ed. 19, 21.

If it be argued that there is an irreconcilable conflict between the first clause and the last clause of section 222, and that therefore the last in order of position must control, then by the same rule the last clause in section 222 must give way to or be controlled, limited and qualified by the provisions of section 225 which shows the sense in which the legislature employed the phrases in section 222 (*Alexander v. Alexandria supra;* 26 Am. & Eng. Enc. Law 2 Ed. 619; 36 Cyc. 1130; *In re Rhoads,* 98 Fed. 399, 401; *In re* Richards, 96 Fed. 935, 939).

With due regard to the language of the entire act giving each word its ordinary meaning and value, and giving to each section a meaning consistent with its terms, we submit that section 222, reduced to its lowest terms is a declaration of intention on the part of the leg-

islature to give every family a homestead exemption either in money or in land of the value of $1500; that if the same is allotted in money the amount shall not exceed $1500; that if the same is allotted or selected in land the area shall not be less than twenty acres nor one lot *provided* that *at any time the execution creditor may pay to the execution debtor the maximum cash exemption of $1500 and sell the twenty acres or one lot as he could have done before the passage of the law.* The words "such homestead" in the last clause of section 222 must relate to the character of homestead mentioned in the clause immediately preceding, that is to say, the homestead *in specie,* the twenty acres or one lot. The words "regardless of value" must, under the settled rules of construction to which reference has been made, be controlled and limited by the first clause in section 222, and by sections 224 and 225. If not, then those three words nullify the first ten words of section 222, seven words in section 224, viz.: "all in excess of fifteen hundred dollars," and practically the whole of section 225, transform a just, reasonable and sensible law into a harsh statute pregnant with inequalities and absurdities, and an ever ready haven of refuge for fraudulent and dishonest debtors.

The learned trial judge apparently was not insensible of this result, for in his decision (Transcript of Record, p. 23) he says: "Now, the language of the homestead law is indefinite and uncertain, and quite difficult, if not impossible, to reconcile. I do not think it can be determined with any certainty until we have an adjudication by a court of last resort. * * * Now, this is a harsh conclusion, but if it is the law, the courts

have no alternative but to enforce it. *In any event this is probably as good a case as will arise for the purpose of testing the question in an appellate court.*" In short, the ruling of the trial court is tantamount to a mere certificate of the question to this court, and was probably not intended as an authoritative precedent. Indeed, the language of the decision justifies the statement that it was pro forma in character, and the burden of reviewing was cast upon the trustee. The error in the conclusion reached therein consists in giving to the words "regardless of value" a literal interpretation as if they stood alone, unmodified, uncontrolled, unlimited and undefined either by any of the other provisions of the act or by its spirit, which is violative of the elementary rule that a statute ought not to be expounded by detached words and phrases but the whole act must be taken together and be given a fair interpretation, neither extending it nor restricting it beyond the legitimate import of its language and its obvious policy and object (*Gayler v. Wilder supra; Pollard v. Bailey,* 20 Wall. 520; 22 L. Ed. 376; *U. S. v. Boisdore,* 8 How. 113; 12 L. Ed. 1009).

Taking the statute as a whole it would be a hard strain on language to say that thereby the legislature evinced an intention of exempting from the just claims of creditors' property of debtors which might easily be, and in many instances is, worth thousands of dollars in excess of all claims against the debtor; or that the obvious policy and object of the act is to render it easily possible for a dishonest debtor to withdraw his investments from property accessible by execution and place his funds within the protection of the homestead law.

To construe the whole act of more than four hundred words by singling out three of those words, and distorting most of the other three hundred and ninety-seven to make them fit the arbitrary and solitary three, may be legislation but it is not judicial interpretation. Those three words must be construed with reference to coordinate words, phrases and provisions.

We respectfully submit that the order of the District Court should be reversed, and the order of the referee affirmed.

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